

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CELERITY EDUCATIONAL GROUP,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014050842

DECISION

Celerity Educational Group (Charter) filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on May 16, 2014, naming Student. The matter was continued for good cause on June 2, 2014.

Administrative Law Judge Elsa H. Jones heard this matter in Los Angeles, California, on August 18, 2014.

Hollis R. Peterson, Attorney at Law, represented Charter. Celesta Deter, Charter's National Vice-President of Pupil Services, attended the hearing on behalf of Charter. The ALJ excused Ms. Deter's attendance during portions of the hearing.

No representative of Student or Parents attended the hearing.

Sworn testimony and documentary evidence were received at the hearing. A continuance was granted for the filing of written closing arguments, and the record remained open until August 25, 2014. Upon receipt of the written closing arguments on August 25, 2014, the record was closed and the matter was submitted for decision.

ISSUE

Was Charter's Multi-Disciplinary Assessment of March 2014 appropriate, and did Charter file its complaint without undue delay, such that Student is not entitled to an independent educational evaluation?

SUMMARY OF DECISION

Charter met its burden of demonstrating that the Multi-Disciplinary Assessment met all legal requirements, and that Charter filed this complaint without undue delay. Student is not entitled to an independent assessment at public expense.

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. Student is a seven-year-old boy, who has resided in the Los Angeles Unified School District at all relevant times. He has attended Celerity Octavia Charter School, a school under the auspices of Charter, at all relevant times. Charter is an independent charter school educational provider which belongs to the Special Education Local Plan Area of District.

2. Student enrolled in Charter in August 2011, when he was almost five years old and entering kindergarten. Prior to that time, he attended preschool in a District Early Education Center. While attending the District preschool, District found Student eligible for special education under the category of speech and language impairment, and District provided speech and language services to Student. At a triennial Individualized Education Program meeting held on April 6, 2011, and prior to Student's enrollment in Charter, District's IEP team determined that Student was no longer eligible for special education and exited Student from special education. Mother signed her consent to the IEP. Student has been in general education since enrolling in Charter.

Mother's Requests for an Assessment

3. By a letter dated January 25, 2014, Mother requested Charter to assess Student. Mother's letter specified that Mother believed Student was having behavioral problems that were interfering with his academic achievement. Mother's letter complained about Student being bullied at school, and described the possible issues as: (1) personal behaviors that interfered with school; (2) emotional behaviors that interfered with social interaction; (3) social behaviors that interfered with his daily life activities such as his academics and friendships; and (4) internal restraint of emotions that later cause difficulty in managing anger outbursts. On January 28, 2014, Mother signed and delivered to Charter a form entitled "Request for Special Education Assessment" on which Mother expressed her concerns as: "Behavioral problems interfering with Student's academic achievement."

Student Success Team Meeting

4. On February 7, 2014, Charter convened a Student Success Team meeting to discuss Mother's request for assessment. The team included Mother. At the meeting, Charter agreed to conduct a Multi-Disciplinary Assessment. Charter's team members suggested that the

assessment include a functional behavior analysis, but Mother declined such an assessment. Mother did not want Student's behaviors observed and documented to the extent necessary for such an assessment, since Student did not misbehave at school. Charter presented Mother with an assessment plan at the meeting, designating assessments in the area of health and development, general ability, academic performance, and social-emotional. Mother signed the consent to assess form upon presentation on February 7, 2014, and delivered it to Charter on the same day.

5. The Student Success Team discussed Mother's concerns regarding Student's motivation, his difficulty with focusing, recent change in mood, and a decline in grades. Staff was concerned regarding Student's inattention and that he acted out physically when upset. Since January 24, 2014, Student was participating in counseling sessions at school with Leilani Lu, the school counselor, that addressed social skills development, including how to verbalize his feelings when upset or frustrated and to ask for adult help in conflict situations. Mother informed the team that Student had recently been diagnosed with attention-deficit hyperactivity disorder, and that he had briefly taken medication for his symptoms. However, at the time of the meeting, Student was no longer taking medication and Mother was seeking a second opinion regarding ADHD from another physician.

6. The team recommended that the counseling sessions continue at a rate of one session per week for 30 minutes each. The team also recommended other behavioral techniques and accommodations to help Student manage his behavior around others and to assist him in completing his classwork and focusing on tasks.

Multi-Disciplinary Assessment

7. Karen Orellana, Charter's school psychologist, conducted all but the academic portions of the Multi-Disciplinary Assessment of Student on March 6, 2014, and March 12, 2014. She prepared a report of her assessment dated March 27, 2014. Ms. Orellana received her B.A. in psychology, sociology, and Spanish from Mount St. Mary's College in Los Angeles, and her M.A. in educational psychology from Loyola Marymount University in Los Angeles. She holds a Pupil Personnel Services credential in school psychology. She has been employed by Charter for approximately four years as a school psychologist. She is bilingual in Spanish and English. Ms. Orellana was trained in administering the assessment instruments she administered to Student, and she was qualified to administer those assessment instruments.

8. Ms. Orellana's report noted Mother's concerns regarding Student's motivation, difficulty with focusing, recent mood change, and decline in grades. The report stated that the purpose of the assessment was to identify and describe the significant elements in Student's learning style and the psychological processes and social-emotional factors that affected Student's access to the general curriculum. The assessment would identify the present level of Student's functioning in the areas suspected to be problematic and consider how to address them in school, and determine whether Student was eligible for special education under the categories of specific learning disability and other health impairment.

9. Ms. Orellana's report noted that Student was seven years, four months old, and in second grade at Charter. She obtained relevant background information from a review of school records, prior assessments, input from parents, teachers, and other school staff, and observations of and conversations with Student. She reported on Student's health and developmental history, which was unremarkable except for his pediatrician's suspicion that Student had ADHD. She also reported on Student's family history, which was unremarkable. She noted that Student was exited from special education on April 6, 2011 by District, and that he had been attending Charter since August 2011, when he entered kindergarten.

10. Ms. Orellana's report described that Student had an initial one-time urgent counseling session on January 24, 2014, and had been participating in regular weekly counseling sessions since that time to address social skills development. Student had made progress with counseling. The report listed Student's classroom accommodations regarding behavior, and that a Student Success Team meeting was held on February 7, 2014.

11. Ms. Orellana's report contained charts regarding Student's grades from first grade (the 2012-2013 school year) through the second trimester of second grade (the 2013-2014 school year), his results on periodic Charter assessments, known as benchmark assessments, as well as his results on school-wide writing exams.

12. In conducting her assessment, Ms. Orellana observed Student in the classroom during his English Language Arts period, and on the playground. She observed Student participating in classroom activities. He was easily distracted by his environment, but was able to return to task and follow instruction when redirected and reminded. During morning recess, Student walked in line with his classmates to the playground, ate his snack, and socialized with other students.

13. Ms. Orellana's report contained her testing observations. Student came willingly to the testing session, verbally returned the assessor's greeting, and engaged in appropriate casual conversation. He was cooperative through the testing and appeared to try his best on all tasks presented. He attended and followed directions well, and asked for clarification when he did not understand the instructions. He demonstrated adequate eye contact and appropriate affect, and performed well, in general.

14. Ms. Orellana's report noted that school records listed Student's primary languages as Portuguese and Spanish, and that he was classified as an English Language Learner. His records also reflected that his overall English development was within the intermediate level in the 2013-2014 school year, and he demonstrated fluency in spoken English. English appeared to be his dominant language, and it was the language used for his instruction in class. Student was fluent in English, and Ms. Orellana conducted the assessment in English.

15. Ms. Orellana administered the following assessment instruments: Cognitive Assessment System; Beery-Buktenica Developmental Test of Visual-Motor Integration,

Sixth Edition; Test of Visual Perception Skills, Third Edition; Test of Auditory Processing Skills, Third Edition; Attention-Deficit/Hyperactivity Disorder Test; and the Behavior Assessment System for Children, Second Edition. She administered each instrument in accordance with the test instructions. The materials and procedures used for the assessment were selected and administered so as not to be racially, culturally, or sexually discriminatory, and were considered valid for the purposes for which they were used.

16. The Cognitive Assessment test is a test of cognitive ability. The test covered four domains: planning, simultaneous processing, attending, and successive processing. Overall, Student's level of intellectual ability fell within the average range on this test. His planning ability fell within the high average range, his simultaneous processing ability fell within the average range, his attention fell within the average range, and his successive processing fell within the average range.

17. Student's overall index score of 96 on the Visual Perceptual Skills test also placed him in the average range. This score reflected that Student had an average ability to perceive, recall, and organize information that he saw. The test included a Basic Processes Index, on which Student scored in the average range; the Sequencing Index, which measured visual sequential memory, and on which Student also scored in the average range; and the Complex Processing Index, on which Student also scored in the average range. Ms. Orellana reported that Student's visual-perceptual skills appeared to be appropriately developed.

18. Student's overall index score of 107 on the Auditory Processing Skills test also placed him in the average range. This meant that he had an age-appropriate ability to perceive, organize, and recall information he heard. The test included Phonological Index subtests, which provided a quick assessment of basic phonological abilities, that is, the abilities to discriminate between words and within words, segmentation of words into morphemes (a word's smallest meaningful linguistic unit) and blending of phonemes (meaningful sound units) into words. Student scored in the above-average range on this index, as he demonstrated a strong ability to discriminate between sounds within words, segment words into morphemes and blend phonemes into words. The test also included the Memory Index subtests, which measured basic auditory memory processes, including sequencing. His auditory memory skills were within the average range, which meant that he demonstrate appropriate processing ability when asked to recall a series of words and sentences and information presented orally. Ms. Orellana also administered the Cohesion Index subtests, which measured higher order linguistic skills such as comprehension of spoken words with ability to use inferences, deduction, and abstractions to determine meaning. Student scored in the average range on this index, and demonstrated strong abilities to gather information from spoken passages and use the information to answer questions. Ms. Orellana reported that Student's overall auditory processing skills appeared to be appropriately developed.

19. Student obtained a standard score of 103 on the Visual-Motor Integration test, which reflected that Student's ability to coordinate his visual and fine motor skills fell within the average range. Mr. Orellana reported, based upon Student's score on this test and teacher

report, that Student was able to copy work from the board and drew well, and that Student's visual-motor skills appeared to be age-appropriate and adequately developed.

20. Ms. Orellana also reported that Student's fine and gross motor skills appeared to be age-appropriate. He wrote using a standard tripod pencil grasp, cut out basic shapes with scissors, could pick up small objects with a pincer grasp, and could transfer an object from one hand to another. He could walk, run, and jump; climb up and down stairs using alternating feet; and kick, roll, throw, and catch a ball from a minimum distance of 10 feet.

21. Ms. Orellana assessed Student's social-emotional status by administering two separate rating scales to both Mother and Student's classroom teacher, Terrilyn Dupree. The Behavior Assessment rating scale was designed to facilitate the diagnosis and classification of a variety of emotional and behavioral disorders of children and to assist in the design of treatment plans. Mother and teacher each rated Student in the normal range on the Behavioral Symptoms Index of this rating scale. On the Externalizing Problems scale, Mother and teacher rated Student in the normal range in the areas of hyperactivity and aggression. Mother rated Student in the normal range in the area of conduct. These ratings indicated no or few difficulties in those areas. Student demonstrated self-control and self-regulation, did not bully, tease, threaten, or hit others, did not often argue with parents or teachers, obeyed school and home rules, and did not lie, cheat, or steal. In contrast to Mother's conduct ratings for Student, teacher rated him in the at-risk range, indicating he may often break rules, and sometimes disobeyed, used things without permission, and got into trouble. Mother rated Student in the normal range on the Internalizing Problems scale of the Behavior Assessment rating scale, including anxiety, depression, and somatization. This reflected that Student did not display behaviors stemming from worry, nervousness, or fear. He made friends easily, did not appear lonely or sad, and did not display health-related concerns that may be due to underlying emotional problems. Student's teacher rated Student in the at-risk range on the Internalizing Problems Scale, indicating that Student complained of health-related concerns that may be due to underlying emotional problems. Teacher reported that Student almost always complained about health, often visited the school nurse, complained of getting sick and about pain, and sometimes complained of stomach problems and fevers. Ms. Orellana reported that school staff has never witnessed Student being physically ill or having a fever at school. Mother and teacher each rated Student in the normal range on atypicality and withdrawal. Mother rated Student in the normal range on attention problems. Teacher rated Student in the normal range on learning and school problems. These ratings reflected that Student did not engage in odd behaviors, was sociable and made friends easily, listened carefully to directions, could sustain attention during tasks, and was not easily distracted. He typically completed his work, was organized, and demonstrated good study habits. He typically analyzed the nature of a problem before trying to solve it. Unlike Mother, Student's teacher rated him in the at-risk range on attention problems, indicating that Student did not often listen carefully to directions or sustain attention during tasks.

22. Finally, Student achieved ratings in the normal range on the Adaptive Skills scale of the Behavior Assessment rating scale, including adaptability, social skills,

leadership, and functional communication. Teacher rated him in the normal range on study skills, and Mother rated him in the normal range on activities of daily living. These ratings reflected that Student adapted easily to changes in the environment and in daily routines, and recovered quickly after a setback. He was courteous to others, made decisions easily, was a self-starter, and gave good suggestions for solving problems. He acted safely at home, volunteered to help around the house, and organized his chores well. He communicated clearly, and responded appropriately to questions. He could accurately write messages and locate information when needed.

23. Ms. Orellana also administered the Attention-Deficit/Hyperactivity Disorder Test to Mother and Ms. Dupree. This test is designed to identify students with attention deficits that may be affecting learning in the classroom. The test consists of 36 items that describe characteristic behaviors of people with ADHD, divided into three subtests representing the core symptoms of the disorder: hyperactivity, impulsivity, and inattention. Mother rated Student as having very low levels of hyperactivity, impulsivity, and inattention. Ms. Dupree rated Student as having average levels in the areas of impulsivity, hyperactivity, and inattention.

24. Based on observations, review of records, interviews, and teacher rating scales, Student presented with some difficulties in somatization (health-related complaints that may be due to underlying emotional problems), and in his ability to stay on task. However, with reminders and prompting, Student was performing well in all academic areas in his general education classroom. Therefore, Ms. Orellana concluded that Student's social-emotional skills development did not appear to be impacting his access to the general education curriculum.

25. Ms. Orellana evaluated Student's adaptive skills. Based on Parent and teacher reports, Student was able to care for his basic needs, and there were no current concerns about Student's self-help skills.

26. Ms. Orellana's report described Student's language skills. He typically communicated using complete sentences and short phrases. He was able to communicate his needs and wants, and he was talkative when engaged. His speech was clear and easily understood. He could follow multi-step directions in the classroom and could recall stories read aloud to him.

27. Ms. Orellana's report referred to and summarized the academic testing performed by Guadalupe Villacinda, a Charter resource specialist teacher. Based on review of records, student work samples, and teacher input, Ms. Orellana concluded that Student was meeting grade level standards across all content areas. His teacher reported that Student read well, could easily grasp new concepts, and demonstrated mastery of grade level standards. His scores on Charter's school-wide writing exams and English Language Arts benchmark exams were within the proficient range, which indicated that Student was performing at grade level in the areas of writing and reading. Student had made significant academic progress throughout the school year.

28. The Multi-Disciplinary Assessment was a valid and reliable reflection of Student's current level of functioning. The results were cross-correlated through formal and informal testing, interviews with Parent and teacher, and observations of Student in a variety of settings. Further, the results of the assessment were not due to environmental, cultural, or economic factors, limited English proficiency, lack of instruction in math or reading, a temporary physical disability, or social maladjustment. The instruments Ms. Orellana used were technically sound to address the relative contribution of cognitive, behavioral, physical, and developmental factors.

29. Ms. Orellana noted Student's strengths. Student functioned in the average range of cognitive ability, and demonstrated high average skills in planning and phonological processing. He had average abilities in simultaneous processing, attention processing, successive processing, visual and auditory processing, and visual motor integration. Based on review of records, interview, observations, and formal testing, Student did not present with any weaknesses.

30. Ms. Orellana's report contained the legal eligibility criteria for specific learning disability and other health impairment. She determined that, based on the assessment, Student was functioning at his academic potential in all areas, and did not demonstrate a disorder in any of the basic psychological processing skills, and therefore he did not meet eligibility criteria for a specific learning disability. She also determined, based upon the assessment, that clinically significant levels of ADHD characteristics were not apparent in the school or home settings. His difficulties with focus and attention did not adversely impact his educational performance. Therefore, she concluded that Student did not meet eligibility criteria as a student with other health impairment. She recommended: (1) continued placement in a general education classroom; (2) repetition and rephrasing of oral directions, and checking for understanding; and (3) frequent praise for on-task behavior and task completion.

31. Ms. Villacinda administered the academic assessment portion of the Multi-Disciplinary Assessment, and wrote a report dated March 25, 2014. Ms. Villacinda received her B.A. in psychology from California State University, Los Angeles, and expects to receive her M.A. in special education in June 2015. She currently holds a mild/moderate intern credential, and her duties include conducting academic assessments. She was trained in administering the assessment she administered to Student, and was qualified to administer the assessment. She has been employed as a resource specialist teacher by Charter since August 2013. She is bilingual in English and Spanish.

32. Belen Selgado supervised Ms. Villacinda's administration of the academic assessment and Ms. Villacinda's preparation of the assessment report, out of an abundance of caution, because Ms. Selgado had a clear credential and Ms. Villacinda, despite her training and experience in administering the academic assessment, held only an intern credential. Ms. Selgado has been employed by Charter as a resource specialist teacher from July 2010 to July 2013, and as a curriculum and inclusion specialist from July 2013 through the present. She oversees the administration of academic assessments and the production of assessment

reports as a routine part of her employment duties. She received her B.A. in liberal studies and her M.Ed. from California State Polytechnic University, Pomona. She holds a California multiple subject teaching credential, a California education specialist instruction credential levels 1 and 2, and a California autism authorization credential.

33. Ms. Villacinda administered the academic assessment in English. Ms. Villacinda's report noted Mother's concerns regarding Student's behavior, and that Student had been receiving counseling. Ms. Villacinda reviewed the school nurse's health report and noted that Student had no significant health issues that might impede his educational performance. As part of her assessment, Ms. Villacinda reviewed Student's academic performance during first and second grade, including Charter's benchmark assessments in reading and math, and school-wide writing tests that Charter performed, as well as Student's report cards. At the time of Ms. Villacinda's assessment, Student's report card reflected that the only academic areas in which Student was consistently performing at less than grade level were Reading Literature, and Writing. His grade of "2" in those skills during the first and second trimesters signified he was only Partially Proficient, whereas a grade of "3" (Proficient) would have meant he was working at grade level. Student's benchmark assessments for 2nd grade indicated that in September 2013, Student obtained a Below Basic score in English Language Arts, which rose to the Proficient score for all three subsequent benchmark exams through March 2014. On the Math benchmark examinations during the 2013-2014 school year, Student's scores ranged from Advanced to Proficient. Student's scores on the three school-wide writing exams during the 2013-2014 school year also ranged from Advanced to Proficient. Overall, in Ms. Villacinda's opinion, Student was performing at grade level.

34. Ms. Villacinda interviewed Student's teacher, Ms. Dupree. Student was a bright student, eager to participate in class, and could complete assignments in the classroom when he stayed focused. He had difficulty organizing his time and materials to complete a task, and he had difficulty concentrating on a task and copying work from the board. However, his teacher could easily redirect him back to tasks. He was able to recognize grade level sight words, he could blend and decode words, and he could read orally with accuracy and speed, but he had difficulty reading with expression. He could comprehend what he read to himself. He could spell grade level sight words. He could write without reversals, and could write short and compound sentences with appropriate end punctuation and syntax. He could recognize math symbols, add, subtract, and multiply. He could apply math to real life problems, but he had difficulty solving word problems. He could follow one-step directions and recall stories read to him. He had difficulty following two-step and multi-step directions. Student could orally express himself using short phrases, and simple and compound sentences. He could perform all necessary motor tasks. He could recall auditory and visual information, and he could draw very well.

35. Ms. Villacinda observed Student in his classroom during a grammar session. Student was able to say focused, and he correctly answered a teacher question. Student was able to follow teacher's directions, to timely complete tasks, and to transition effectively

between activities. At times he would doodle in his notebook, but he always redirected himself.

36. Ms. Villacinda selected and administered the assessment instruments so as not to be racially, culturally, or sexually discriminatory. They were validated for use in measuring academic achievement, they were scientifically valid and reliable, and she administered them in accordance with the test instructions.

37. She administered the Woodcock-Johnson III Test of Achievement, Form A, to measure Student's skills and knowledge in reading, mathematics, and writing. She administered the test during two 40-minute sessions, and reported on her observations of Student during testing. Student's conversational proficiency appeared appropriate for his chronological age, and he was exceptionally cooperative throughout the testing. He demonstrated age/grade appropriate levels of activity and confidence. He declined offers of breaks between subtests. He was prompt but careful in responding to test items, and was slower and careful in responding to more complicated items. When presented with a difficult task, he generally persisted with it.

38. Student obtained an overall standard score of 104 in Brief Reading, which placed him in the average range. His subtest standard scores were 105 in Letter-Word Identification, and 103 in Passage Comprehension. Both of these subtest scores placed Student in the average range.

39. Student obtained an overall standard score of 127 in Brief Mathematics, which placed him in the superior range. His subtest standard scores were 117 in Calculation, which placed him in the high average range, and 125 in Applied Problems, which placed him in the superior range.

40. In Brief Writing, Student obtained an overall standard score of 99, which placed him in the average range. His subtest standard scores were 113 in Writing Samples, which placed him in the high average range, and 90 in Spelling, which placed him in the average range.

41. Based on Student's academic record, assessment data, teacher and Parent information, work samples, and classroom observations, Ms. Villacinda concluded that Student appeared to be performing within the average to superior range and at grade level standards when compared to his grade level peers in the areas of reading, math, and writing. The assessment results did not appear to be primarily due to the effects of environmental, cultural, or economic disadvantage, and they were a valid and reliable reflection of Student's current level of academic functioning. In Ms. Villacinda's opinion, Student did not need special education and related services to remediate academic needs.

IEP Meeting

42. On April 3, 2014, Charter convened an IEP team meeting to discuss the assessment results. Prior to the meeting, Ms. Orellana provided to Mother the report of the Multi-Disciplinary Assessment, and Ms. Villacinda provided to Mother the report of the academic assessment. All required members of the IEP team were present, including Parents, Ms. Dupree (Student's teacher), Ms. Orellana, and Ms. Villacinda. The team discussed Student's present levels of performance, and Ms. Orellana and Ms. Villacinda presented the results of their assessments. The team determined that there were no areas of need in the areas of health, cognitive functioning, reading, writing, math, English language development, and social emotional functioning. Nobody at the meeting raised any concerns that Student had any disability that had not been investigated or addressed by Charter. Nobody at the meeting criticized the assessment reports. The team determined that Student did not require special education and related services to help support his academics. A copy of the IEP was sent home for review. Parents did not consent to the IEP.

Mother's Request for an Independent Evaluation

43. By letter dated April 22, 2014 to Charter, Mother expressed her disagreement with Charter's Multi-Disciplinary Assessment, and requested an independent evaluation at public expense. In the letter, Mother stated that she disagreed with the evaluation because Student continued to struggle, and she did not believe Charter's assessment was a thorough and comprehensive evaluation of Student's needs.

44. By letter to Mother dated May 2, 2014, Ms. Deter responded to Mother's letter, in the form of a prior written notice. Ms. Deter's letter explained that Charter was denying Mother's request for an independent assessment, and intended to request a due process hearing. Ms. Deter's letter explained why Charter considered its assessment to be appropriate. The letter also advised Mother that if Mother obtained an independent assessment at her own expense, Charter would consider the results of such an assessment when it made any decision with respect to providing Student a free appropriate public education. Ms. Deter's letter enclosed information regarding where such an independent assessment may be obtained, and the criteria applicable to such an assessment, as well as a copy of the procedural safeguards. Ms. Deter sent the letter to Mother by U.S. mail and e-mail. Charter never received a response to Ms. Deter's letter.

LEGAL CONCLUSIONS

Introduction – Legal Framework under the IDEA

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement the IDEA and

its regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.;¹ Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living; and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this matter, because Charter filed the complaint and requested the hearing, Charter has the burden of proof.

Issue: Whether Charter's Multi-Disciplinary Assessment was Appropriate

3. Charter contends that its Multi-Disciplinary Assessment was appropriate and that Charter complied with all procedural requirements such that Student is not entitled to an independent evaluation at public expense.

ASSESSMENTS

4. Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil's educational needs shall be conducted. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) The pupil must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the pupil has a disability or whether the pupil's educational program is appropriate. (20 U.S.C. § 1414 (a)(2), (3); Ed. Code, § 56320, subds. (e) & (f).) The assessment must be sufficiently comprehensive to identify all of the child's special education and related services needs, regardless of whether they are commonly linked to the child's disability category. (34 C.F.R. § 300.306.)

¹All references are to the 2006 edition of the Code of Federal Regulations, unless otherwise stated.

5. The school district must provide notice to the parents of a child with a disability, in accordance with 34 Code of Federal Regulations parts 300.503, that describes any evaluation procedure the agency proposes to conduct. (34 C.F.R. § 300.304.) The district must obtain informed parental consent prior to conducting an assessment or reassessment of a child with a disability. (34 C.F.R. § 300.300.) Parental consent pursuant to the IDEA requires that the parent has been fully informed of all information relevant to the evaluation, the parent understands and agrees in writing to the carrying out of the activity for which parental consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom. (34 C.F.R. § 300.9.)

6. The same basic requirements for an initial assessment apply to reassessments. (20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.303; Ed. Code, § 56381, subd. (e).) Reassessments of the pupil shall be conducted if the school district determines that a reassessment is warranted, or if the pupil's parents or teacher requests a reassessment. (Ed. Code, § 56381, subd. (a)(1).)

7. Both the IDEA and the California Education Code specify the manner in which the assessments must be conducted and the qualifications of the assessors. (20 U.S.C. § 1414 (a) and (b); 34 C.F.R. § 300.502; Ed. Code, § 56320.) As part of a reevaluation, the IEP team and other qualified professionals must review existing evaluation data on the child, including teacher and related service providers' observations. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. § 300.305; Ed. Code, § 56381, subd. (b)(1).) Based upon such review, the school district must identify any additional information that is needed by the IEP team to determine the present level of academic achievement and related developmental needs of the student, and to decide whether modifications or additions to the child's special education program are needed. (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).) The school district must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).)

8. Tests and assessment materials must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(a)(2), (3); Ed. Code, § 56320, subds. (a), (b).) Assessments must be conducted by individuals who are both "knowledgeable of the student's disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (Ed. Code, §§ 56320, subd. (g), and 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324.) A health assessment shall be conducted by a credentialed school nurse or physician who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, § 56325, subd. (b).) Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally, or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(2), (3); Ed. Code, § 56320, subds. (a), (b).)

9. In conducting the assessment, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, which may assist in determining whether the student is a child with a disability, and the content of the IEP. (20 U.S.C. § 1414(b)(2)(A)(i).) The school district must use technically sound instruments to assess the relative contribution of cognitive and behavioral factors, as well as physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C).)

10. Assessments must be selected and administered to best ensure that the test results accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure. (Ed. Code, § 56320, subd. (d); 34 C.F.R. § 300.304(c)(3).)

11. The assessor must prepare a written report that includes: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development, and medical findings, if any; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) the need for specialized services, materials, and equipment for pupils with low incidence disabilities. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting required after the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56329, subd. (a)(3).)

12. The IEP team shall meet to review an initial formal assessment, and may meet to review any subsequent formal assessment. The team shall also meet upon the request of a parent to review, develop, or revise the IEP. (Ed. Code, § 56343, subd. (a), (c).)

INDEPENDENT EVALUATIONS

13. The procedural safeguards of the IDEA provide that under certain conditions a parent is entitled to obtain an independent evaluation of a child at public expense. (20 U.S.C. § 1415(b)(1).) An independent evaluation is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).) A parent may request an independent evaluation at public expense if the parent disagrees with an evaluation obtained by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an independent evaluation at public expense, the school district must, "without unnecessary delay," either initiate a due process hearing to show that its evaluation is appropriate, or provide the independent evaluation at public expense, unless the school district demonstrates at a due process hearing that the evaluation obtained by the parent does not meet its criteria. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).) The school district may inquire as to the reason why the parent disagrees with the independent evaluation, but the school district may not require the parent to provide

an explanation, and may not unreasonably delay in either providing the independent evaluation at public expense or in filing its due process complaint to demonstrate the appropriateness of its assessment. (34 C.F.R. § 300.502(b)(4).) Further, except for requiring that an independent evaluation at public expense meet agency criteria regarding evaluations (to the extent those criteria are consistent with the parent's right to an independent evaluation), the district may not impose conditions or timelines related to obtaining an independent evaluation at public expense. (34 C.F.R. § 300.503.)

14. Whether the length of time that has passed before a district initiates a due process hearing or provides the independent evaluation at public expense constitutes "unnecessary delay" is a question of fact, based upon the circumstances of the particular case. (*J.P.v. Ripon Unified School District* (E.D. Cal. 2009) 2009 WL 1034993; 52 IDELR 125) (*Ripon*). For example, in *Ripon* the court determined that the school district's due process request filed more than two months after the request for an independent evaluation was timely, as the parties were communicating regarding the request for the independent evaluation in the interim, and did not come to an impasse on the issue until less than three weeks before the school district's filing. In contrast, in the case of *Pajaro Valley Unified School District v. J.S.* (N.D. Cal. 2006) 2006 WL 3734289; 47 IDELR 12) (*Pajaro Valley*), the school district did not file its due process complaint to defend its assessment until approximately 11 weeks after Student's request for an independent assessment. Then, at hearing, the school district offered no explanation as to why it delayed for 11 weeks in filing its complaint, or why that delay was "necessary." The court found that the school district's "unexplained and unnecessary delay in filing for a due process hearing *waived its right to contest* Student's request for an independent evaluation at public expense, and by itself warranted entry of judgment in favor of Student and [parent]." [Emphasis added.]

ANALYSIS

15. Charter's Multi-Disciplinary Assessment met all legal requirements for assessments. Ms. Orellana was qualified to conduct the psychoeducational portion of the assessment. Student spoke English fluently, and Ms. Orellana administered the assessments in English. Her assessment instruments were appropriate to administer to Student, they were selected so as not to be discriminatory, and she administered them in accordance with the test instructions. She used assessment instruments that were valid and reliable, as is demonstrated, in part, by the fact that nobody at the IEP meeting expressed any criticisms of her report. She used a variety of assessment measures, both standardized and non-standardized. She reviewed existing evaluation data. Ms. Orellana assessed Student in all areas of suspected disability within the psychoeducational assessment realm, and while focusing on the behavioral area in which Mother suspected a disability, Ms. Orellana's assessment, combined with Ms. Villacinda's academic assessment, was sufficient to identify any of Student's special education needs. Ms. Orellana prepared a thorough and appropriate report of the assessment, which explained the assessment results, described Student's observed behaviors and their relationship to his academic and social functioning, described Student's strengths and weaknesses, and discussed whether Student needed special education

and related services. Ms. Orellana provided Mother with a copy of her report prior to the IEP meeting at which Ms. Orellana presented the report.

16. The academic assessment portion of the Multi-Disciplinary Assessment also met all legal requirements for assessments. Ms. Villacinda was qualified to conduct the assessment. Her assessment instruments were appropriate to administer to Student, they were selected so as not to be discriminatory, and she administered them in accordance with the test instructions. She administered the assessment in English, the language in which Student was fluent. She used assessment instruments that were valid and reliable for use in measuring academic achievement, as is demonstrated, in part, by the fact that nobody at the IEP meeting, including Student's teacher, criticized the report. She used a variety of assessment measures, including standardized tests, teacher interview, and observations of Student. She assessed Student in all areas of suspected disability within the academic assessment realm. She reviewed existing evaluation data. She prepared a thorough and appropriate report of the assessment, which explained the assessment results, described Student's observed behaviors and their relationship to his academic functioning, described Student's strengths and weaknesses, and discussed whether Student required special education and related services. Ms. Villacinda provided a copy of the report to Mother prior to the IEP meeting at which Ms. Villacinda presented the report.

17. Turning to Charter's conduct after Mother requested the independent evaluation, the law required that Charter do one of two things, without unnecessary delay: (1) initiate a due process hearing to show that its Multi-Disciplinary Assessment was appropriate; or (2) provide an independent evaluation at public expense, as requested by Mother. Charter did not agree to conduct an independent evaluation. Rather, Charter sent the required prior written notice letter dated May 2, 2014, to Mother, denying her request for an independent evaluation, 10 days after receiving Mother's request for such an evaluation. Charter then filed its complaint to defend the appropriateness of its assessment on May 16, 2014, 24 days subsequent to Mother's request. In view of the fact that the *Ripon* court considered a school district to have acted without unnecessary delay when it filed a complaint more than two months after the parent had requested an independent evaluation, the 24-day period between Mother's request and Charter's complaint demonstrates that Charter acted without unnecessary delay.

18. Therefore, the evidence demonstrated that Charter's Multi-Disciplinary Assessment of Student was properly conducted, and Charter filed its complaint for a due process hearing without unreasonable delay, such that Student is not entitled to an independent evaluation at public expense.

ORDER

1. Charter's Multi-Disciplinary Assessment was appropriate.
2. Charter is not obligated to fund an independent evaluation as requested by

Student.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Charter prevailed on the only issue heard and decided in this matter.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Dated: September 19, 2014

_____/s/_____
ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings